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Paper No. 10

JUL 23 2003

In re Application of
Stephen R. Welch
Application No. 09/852,996
Filed: May 10, 2001
Attorney Docket No. 4004022.0026

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: DECISION ON PETITION
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This is a decision on the petition filed by facsimile transmission on June 25, 2003 by which petitioner requests withdrawal of the examiner's holding that the application stands abandoned for failure to timely file a proper reply to the Office letter dated December 20, 2002. The petition is being considered under 37 CFR 1.181, and no fee is required for the petition.

The petition is denied.

Petitioner concedes that no reply to the outstanding Office letter was filed within the statutory period set by 35 USC § 133, this period having expired on June 20, 2003.¹ Petitioner argues that during a telephone interview, the examiner in charge of the application stated that the Office letter dated December 20, 2002 was in error and that petitioner should "ignore the action", and a new action would be forthcoming.

The examiner has now made of record an interview summary in which he states that he does not recall having advised petitioner to ignore the Office letter in question and to not file a reply thereto. It is clear, therefore, that at best, there is doubt on this issue. It is for this very reason that all Office business should be conducted in writing, and no attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.² The examiner was, and remains, without authority to waive either 35 USC § 133 or the implementing regulation.³ Accordingly, there is simply no basis to withdraw the holding of abandonment, which holding is mandated both by 35 USC § 133 and 37 CFR 1.135. It appears that petitioner's proper course is to petition to revive pursuant to 37 CFR 1.137.

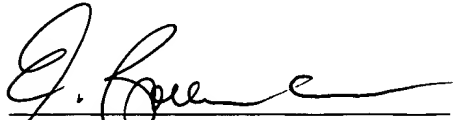
¹A response was filed by facsimile transmission concurrently with the petition, and the file contains an authorization to charge any necessary 37 CFR 1.17 fees which include fees for extensions of time under 37 CFR 1.136(a), but this response cannot be accepted as timely since the last date for filing a reply to the Office letter in question would have been June 20, 2003.

²See 37 CFR 1.2

³See 37 CFR 1.135(a) which states that "[I]f an applicant of a patent application fails to reply with the time period provided under § 1.134 and § 1.136, the application will become abandoned *unless an Office action indicates otherwise.*" (Emphasis supplied.)

As an alternative to filing a petition under 37 CFR 1.137, petitioner is entitled to file a request for reconsideration of this decision. Any such request must be filed within two months of the date of this decision. See 37 CFR 1.181(f). The application is being returned to storage as an abandoned file.

PETITION DENIED.

A handwritten signature in black ink, appearing to read 'E. Rollins-Cross', written over a horizontal line.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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